

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7155

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

SAMUEL WESLEY, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Catherine C. Blake, District Judge. (CR-97-33; CA-02-1749-CCB)

Submitted: September 16, 2004 Decided: September 24, 2004

Before LUTTIG, KING, and DUNCAN, Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Samuel Wesley, Jr., Appellant Pro Se. John Francis Purcell, Jr., OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Samuel Wesley, Jr., a federal prisoner, seeks to appeal the district court's order denying relief on his motions filed under Fed. R. Crim. P. 33, 28 U.S.C. § 2255 (2000), and Fed. R. Civ. P. 59(e), and on his motion to amend his § 2255 motion. We affirm in part and dismiss in part.

With regard to Wesley's appeal of the district court's denial of his Rule 33 motion for a new trial, we have reviewed the record and find no abuse of discretion. See United States v. Perry, 335 F.3d 316, 320 (4th Cir. 2003) (stating standard of review), cert. denied, 124 S. Ct. 1408 (2004). Accordingly, we affirm that portion of the district court's order.

Turning to the denial of post-conviction and Rule 59(e) relief, the orders are not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the

record and conclude that Wesley has not made the requisite showing. Accordingly, we deny Wesley's motion for a certificate of appealability and dismiss this portion of the appeal.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART AND DISMISSED IN PART